

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTHA LUND)	
Claimant)	
VS.)	
)	
THE BOEING COMPANY)	Docket No. 199,057
Respondent)	
AND)	
)	
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY and AETNA CASUALTY & SURETY CO.)	
Insurance Carriers)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

The respondent and one of its insurance carriers, American Manufacturers Mutual Insurance Co., requested review of the Award dated May 3, 1996, entered by Administrative Law Judge Shannon S. Krysl. The Appeals Board heard oral argument October 9, 1996, in Wichita, Kansas.

APPEARANCES

Claimant appeared by her attorney, Steven R. Wilson of Wichita, Kansas. Respondent and American Manufacturers Mutual Insurance Co. (Kemper) appeared by their attorney, Eric K. Kuhn of Wichita, Kansas. The respondent and Aetna Casualty & Surety Co. appeared by their attorney, David M. Druten of Kansas City, Kansas. The Workers Compensation Fund appeared by its attorney, Marvin R. Appling of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge found the date of accident to be June 3, 1994, the date claimant underwent left elbow surgery, and evenly apportioned liability between the two insurance carriers. Kemper requested review of those findings and contends the correct date of accident is December 18, 1992, because claimant's condition allegedly was completely manifested by that date. The date of accident and its effect upon the insurers' liability are the only issues on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Administrative Law Judge's finding of date of accident is affirmed. However, the finding of liability between the insurers is modified.

Aetna Casualty & Surety Company (Aetna) provided respondent workers compensation insurance coverage through December 31, 1993. After that date Kemper provided the coverage.

At the time of regular hearing, claimant had worked for the respondent for 11 years as a sheet metal mechanic. Claimant initially developed problems with the right elbow in December, 1991. Claimant reported those problems to respondent's medical department. Several months later, claimant began having problems with the left elbow. Respondent initially referred claimant to Paul Lesko, M.D., who examined claimant in January 1992 and diagnosed right lateral epicondylitis. Dr. Lesko provided claimant with conservative treatment and injections. Apparently claimant's symptoms somewhat subsided as she continued to work.

In December 1992, claimant saw Tyrone Artz, M.D., who diagnosed bilateral epicondylitis and injected both elbows. Claimant continued to work and in June 1993 returned to Dr. Artz because of a flare up in the symptoms of both elbows. Again, Dr. Artz permitted claimant to return to work without restrictions. Claimant's condition progressively worsened until June 3, 1994, when Dr. Artz performed surgery on the left elbow. Following surgery, claimant returned to work for the respondent in August 1994, and continues to work. Claimant has requested that she not be issued permanent restrictions so that she can continue to work.

The Appeals Board finds that claimant sustained injury to her upper extremities during the period of December 1991 through June 3, 1994, when she left work for surgery. Considering both Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994) and Condon v. The Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995), the Appeals Board finds that claimant's date of accident for the period of injury in question is June 3, 1994, as found by the Administrative Law Judge. This conclusion is based upon claimant's testimony that her symptoms progressively worsened until she obtained surgery in June 1994 the medical history, and the fact that she continued performing her regular job duties until that date. Also,

June 3, 1994, is the approximate last day worked by claimant during that identifiable period of injury and the date that claimant first missed work due to these injuries.

Based upon the above finding, the Appeals Board finds that Kemper is responsible for payment of claimant's temporary total and permanent partial disability benefits and the medical expense incurred after December 31, 1993. However, the Appeals Board finds that Aetna is responsible for the medical expenses claimant incurred before January 1, 1994.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that June 3, 1994, is the appropriate date of accident for this proceeding; that Kemper is responsible for payment of claimant's temporary total and permanent partial disability benefits and the medical expense claimant incurred for this accidental injury after December 31, 1993, and that Aetna is responsible for the medical expense incurred for this accidental injury before January 1, 1994. All other orders entered by the Administrative Law Judge in the Award are herein adopted by the Appeals Board as its own to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Eric K. Kuhn, Wichita, KS
David M. Druten, Kansas City, KS
Marvin R. Appling, Wichita, KS
Administrative Law Judge, Wichita, KS
Philip S. Harness, Director